

FILED

MAY 29 1984

ALEXANDER L. STEVAS,

CLERK

No. 83-1719

In the Supreme Court of the United States

OCTOBER TERM, 1983

JOSEPH CUSMANO, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

REX E. LEE
*Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217*

In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-1719

JOSEPH CUSMANO, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT*

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that his conviction on charges of reducing, and conspiring to reduce, his employees' wages through threats of economic loss was improper because his activities fell outside the proscriptions of the Hobbs Act, 18 U.S.C. 1951.

1. Following a jury retrial in the United States District Court for the Eastern District of Michigan, petitioner was convicted of violating, and conspiring to violate, the Hobbs Act, 18 U.S.C. 1951.¹ Petitioner was sentenced to three years' imprisonment and a fine of \$5,000 (Pet. App. 1d-2d). Petitioner was indicted along with three other persons who

¹Petitioner's first conviction was reversed on the ground that the indictment was constructively amended at trial. 659 F. 2d 714 (1981) (see Pet. App. 2a n.2; *id.* at 1b-14b).

were convicted at a separate trial. The convictions of petitioner's co-defendants were affirmed by the court below, and this Court declined to grant review. *United States v. Russo*, 708 F.2d 209 (6th Cir. 1983), cert. denied, No. 83-368 (Nov. 28, 1983).

2. In the case of both petitioner and his co-defendants, the gravamen of the offense charged was an extortionate exaction from petitioner's employees of wages to which petitioner had no lawful entitlement. The details of petitioner's scheme are set forth in our opposition to the petition in *Russo* (at 2-6). (We are furnishing petitioner's counsel with a copy of our opposition in *Russo*.) In brief, after failing to achieve wage reductions through collective bargaining, petitioner called each of his employees into his office individually and, "through promises, threats of economic loss, and misrepresentation," procured their assent to an agreement providing for an 11% "service charge" to be deducted from their gross earnings. *Russo*, 708 F.2d at 212. The "service charge" was to be used to pay contributions to a union health and welfare fund and pension plan, even though such contributions were the contractual responsibility of the employer. *Id.* at 215.

3. Contending that he was engaged only in legitimate labor negotiations, petitioner raises precisely the same arguments that were raised by his co-defendants and rejected by the court of appeals in *Russo*. Accordingly, the court below affirmed petitioner's conviction on the basis of its prior decision (Pet. App. 3a). Like the court of appeals, we think it clear that petitioner's arguments are foreclosed by the decision in *Russo*, and his request for this Court's review by the denial of the petition in *Russo*. We rely on our opposition to the petition in that case for our response to the present petition.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

MAY 1984